

REMARKS

Claims 1-12 and 14-26 are now pending in the application. Claims 1-28 stand rejected. Claims 13, 27 and 28 have been cancelled herein, and Claims 1, 2, 5, 8, 14, 15 and 21 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claim 14 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 5, 6 and 8 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants have amended Claims 5, 6, 8 and 14 to overcome this rejection. Therefore, reconsideration and withdrawal of this rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. §§ 102 AND 103

Claims 1-3, 12, 15 and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Geske (U.S. Pat. No. 2,069,088; hereinafter "Geske"). Claims 1-6, 12, 13, 15, and 21-25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rop (U.S. Pat. No. 2,948,560; hereinafter "Rop"). Claim 15 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Lee (U.S. Pat. No. 5,915,805; hereinafter "Lee"). Claims 1-4, 7, 12, 13, 15-17, 21-23, and 26 stand rejected under 35 U.S.C. § 102(b) as

being anticipated by Curtiss (U.S. Pat. No. 2,445,709; hereinafter "Curtiss"). Claims 7, 8, 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rop in view of Lyu (U.S. Pat. No. 5,906,423; hereinafter "Lyu"). Claims 9, 10, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rop. Claims 11 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rop as applied to Claims 9, 10, 18, and 19, and further in view of Geddes. Claims 26-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rop in view of Negrao (U.S. Design Pat. 430,174; hereinafter "Negrao"). These rejections are respectfully traversed.

Initially, Applicants note Geske discloses a refrigerator door 1 that includes an operating handle 20. The operating handle 20 is secured to a plate having ears 5 for receipt of fasteners 11 to couple the plate 5 to an edge of the door 1. The operating handle 20 includes a ledge 21 that pivots a lug 14 to release the lug 14 from the strike portion 28, and thereby release the door 1 from a frame 2. To latch the door 1 to the frame 2, the lug 14 contacts the strike plate and pivots the lug 14 into engagement with the strike portion 28. The handle 20 is coupled to the edge of the door 1 in such a manner that the handle 20 extends outwardly over the front surface of the door 1 in plain sight. With regard to Rop, Rop discloses a keeper 11a that is coupled to a refrigerator cabinet. Bolt members 14a and a handle 20a are coupled to a refrigerator door (Fig. 7). The bolt members 14a are pivotably mounted such that when the handle 20a is pushed in, a pin 24a coupled to the handle 20a draws the right-hand ends of the bolt members 14a together to release the keeper 11a from the bolt members 14a. Note that in order for the bolt members 14a to engage the keeper 11a, the bolt members 14a

must be parallel to the keeper 11a. The bolt members 14a are required to be parallel to the keeper 11a, as the angled surface of the keeper 11a must squarely contact rollers 16a at the end of the bolt members 14a in order to re-latch the door. Regarding Lee, Applicants note that Lee discloses a handle assembly 400 that is mounted to a front surface of a door 30. Applicants note that Curtiss discloses a refrigerator 10 that includes a cabinet 11 and a door 12 that is secured to the cabinet via a latch. The latch includes a handle 36 that is coupled to the exterior door 12. As shown in Figure 1, the handle 36 is coupled to the front of the door 12 and is in plain sight. Regarding Lyu, Lyu also discloses a handle 20 that is coupled to an exterior surface of a refrigerator door 112. Geddes discloses an operating disc 12 coupled to or disposed on a front surface of a refrigerator cabinet door 11. The rotation of the operating disc 12 on the front surface of the door 11 from a first position to a second position unlatches the door 11. Negrao illustrates a latching mechanism that comprises a magnetic door gasket coupled around the perimeter of the door frame. In order to open the door of Negrao, the user must place their hand in a pocket defined in the door, and pull the door outward to overcome the magnetic force of the gasket. In contrast to the cited art, Claim 1 has been amended to recite:

...wherein the latching arrangement is substantially disposed within a recess of the door and substantially hidden from view (emphasis added).

Claim 15 has been amended to recite:

...wherein the latching arrangement is disposed within a recess of the door and substantially hidden from view (emphasis added).

Claim 21 has been amended to recite:

...a handle connected to the door for movement between a first position and a second position, the **handle substantially disposed in the recess;**

wherein the handle is substantially **concealed by a perimeter of the door** (emphasis added).

In view of the above discussion, Applicants respectfully assert that none of Geske, Rop, Lee, Curtiss, Lyu, Geddes or Negrao either alone or in combination, teach, suggest or disclose each and every element of Claims 1, 15 and 21. In this regard, none of Geske, Rop, Lee, Curtiss, Lyu, Geddes or Negrao teach, suggest or disclose whatsoever a latching arrangement that is substantially **disposed within a recess of a door** and substantially **hidden from view**, in which the latching mechanism includes a handle moveable between a first position and a second position to latch and unlatch a pawl, or a latching mechanism that includes a handle disposed in a recess formed in a **top side of a door** and **concealed by a perimeter of the door**. Rather, Geske, Rop, Lee and Curtiss disclose a latching arrangement in which the handle or mechanism to unlatch the door is coupled to the door in such a way that the handle extends over a front, exterior surface of the door or is coupled to the front surface of the door and in plain sight to the user. Applicants note it would be improper to modify Geske, Lee, Curtiss, Lyu or Geddes to include these features as claimed as there is no suggestion to make this modification since it would change the principle of operation of these cited references.

With regard to the Office's combination of Rop with Negrao, the Office states that it would be obvious to modify Rop with Negrao to arrive at the amended subject matter

of Claims 1, 15 and 21. Applicants respectfully submit, however, that the combination of references cited by the Office does not present a *prima facie* case of obviousness. The establishment of a *prima facie* case of obviousness requires that three basic criteria be met: 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings, 2) that there must be a reasonable expectation of success, and 3) that the prior art reference or references must teach or suggest all the claim limitations. See, e.g., *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on an applicant's disclosure. *Id.*

Concerning the motivation to combine the references, the Office has stated that it would have been obvious to combine Rop with Negrao to have "the handle located at the top side of the door." Applicants note, however, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (C.C.P.A. 1959) MPEP 2143.01.

In particular, the Rop reference employs a handle 20a that includes a push button structure for providing access to the interior of the refrigerator in which the bolt members 14a are parallel to the keeper 11a. In order to release the door, the handle 20a is pushed horizontally to pivot both of the bolt members 14a vertically with respect to the keeper 11a to release the keeper 11a. In order to latch the door, the horizontal

movement of the door causes the bolt members 14a to contact the keeper 11a. The keeper 11a then pivots the bolt members 14a such that the balance of forces on the keeper 11a results in a horizontal force tending to draw the door closed. In contrast, Negrao illustrates a pocket defined in the top of the door. The user can utilize the pocket to pull the door open. To modify Rop with Negrao in the manner set forth by the Office would impermissibly modify the principle of operation of the latching mechanism of Rop as Rop requires the handle 20a be positioned horizontally to the keeper 11a. With the handle 20a positioned in the top of the door of Negrao as suggested by the Office, the bolt members 14a would not be able to engage the keeper 11a in the manner contemplated by Rop. Rop requires both the keeper 11a and the bolt members 14a to be coplanar in order to properly distribute the loads on the keeper 11a. Thus, modifying Rop with Negrao would impermissibly modify the principle of operation of the latching mechanism of Rop and is improper.

Further, Applicants submit that positioning the latching mechanism and handle 20a of Rop at the top of the door of Negrao would not necessarily improve the aesthetics of the refrigerator as stated by the Office, but would rather negatively affect the aesthetics of the refrigerator. In particular, Rop discloses a handle 20a that extends beyond the surface of the refrigerator door (Fig. 7). The Office's modification would require the placement of the handle beyond the top surface of the refrigerator, which would also interfere with the opening of the freezer unit as contemplated by Negrao. Applicants note that the Patent Laws draw a distinction between trade-offs and motivation to combine: trade-offs often concern what is feasible, not what is necessarily desirable, whereas motivation to combine requires the latter. See, e.g., *Winner*

International Royalty Corp. v. Wang, 2002 F.3d 1340, 53 USPQ2d 1580 (Fed. Cir.), cert. denied, 530 U.S. 1238 (2000). Consequently, the modification that has been proposed by the Examiner (i.e., modifying Rop to be placed at the top of the door as shown in Negrao) is a trade-off rather than the requisite motivation-to-combine, since it concerns what may be feasible rather than what is necessarily desirable.

In view of the above, Applicants submit that the combination cited by the Examiner does not present a *prima facie* case of obviousness as there is no motivation or suggestion to make the Office's modification, and as such, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of Claims 1, 15 and 21 under 35 U.S.C. §§ 102(b) and 103(a).

With regard to Claims 2-12, 14, 16-20 and 22-26, Applicants note that these claims depend directly or indirectly from either Claim 1, 15 or 21 and thus should be in condition for allowance for the reasons set forth for Claim 1, 15 and 21 above. Thus, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of Claims 2-12, 14, 16-20 and 22-26 under 35 U.S.C. §§ 102(b) and 103(a).

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants, therefore, respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner

believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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